IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 50 OF 2007

Shri Anant Dhargalkar,
H. No. 222, Gaonkarwado,
Dhargal, Pernem, Goa. ... Applicant

versus

Shri Digambar Korgaonkar,
Taragarden,
Near Saraswat Vidyalaya,
Khorlim, Mapusa, Goa. ... Respondent

Mr. S. S. Saudagar, Advocate for the Applicant.

Mr. S. R. Rivonkar, Advocate for the Respondent.

CORAM : N. A. BRITTO, J.

DATE : 4TH OCTOBER, 2007.

ORAL JUDGMENT

Heard the learned Counsel on behalf of both parties.

2. Admit.

3. By consent heard forthwith.

4. This revision is filed by the Accused and is directed against Judgment dated 28-6-2007 of the learned Additional Sessions Judge, Mapusa, confirming the conviction and sentence of the Accused under Section 138 of the Negotiable Instruments Act, 1881.

5. The complaint filed by the Complainant(Respondent herein) was as regards cheque dated 30-7-2005 for Rs.50,000/- issued by the Accused to the Complainant which cheque when presented for payment was returned dishonoured and a statutory notice sent thereafter by the Complainant to the Accused remained uncomplied.

6. There is no dispute that the Complainant and his wife had a decree dated 8-6-2000 in their favour under which the Accused and his wife were required to pay the Complainant and his wife a sum of Rs.1,50,000/-. There is also no dispute that a sum of Rs.1,00,000/- by cheque was paid by the Accused to the Complainant. The case of the Accused was that the said cheque was issued by the Accused as security towards the payment of share of the Complainant's wife which defence of the Accused has been held, and in my view rightly, to be an afterthought, by the learned Additional Sessions Judge.

7. The Complainant examined himself in support of his case and also his wife Netra D. Korgaonkar. The Accused chose not to step in the witness box to support his defence.

8. Both the Courts below have come to the conclusion that the subject cheque was issued by the Accused to the Complainant towards the balance amount of Rs.50,000/- payable by the Accused and his wife under the said decree dated 8-6-2000. Learned Counsel on behalf of the Accused contends that as per the decree the amount was payable within three months and it was also payable to the Complainant as well as his wife and thus it is evident that the subject cheque was not issued by the Accused towards his remaining liability under the said decree.

9. The onus to prove that the subject cheque was issued without consideration or that there was no debt or liability was clearly upon the Accused and which as per the findings given by both the Courts below, the Accused has failed to discharge. Admittedly, the payment of Rs.1,00,000/- was made to the Complainant by the Accused by virtue of a cheque and there is no explanation from the Accused why the said amount was paid solely to the Complainant, if it was payable to the Complainant as well as his wife. Only because the liability under the decree was to be met within a period of three months or that the same was towards the Complainant as well as his wife was insufficient to come to the conclusion that the cheque was issued without consideration. The onus was entirely on the Accused to show that the cheque was issued by the Accused to the Complainant without any consideration or by way of security. In fact, it has come in evidence that although the Complainant did not have a power of attorney given to him by his wife, both the cheqeus were given by the Accused to the Complainant in the presence of his wife. Considering the evidence led by

the Complainant and his wife both the Courts below have come to the conclusion that the subject cheque was issued by the Accused towards the remaining liability which the Accused and his wife had towards the Complainant and his wife. That is the conclusion of facts based on evidence which cannot lightly be interfered with in revisional jurisdiction. Nothing prevented the Accused from discharging his liability and that of his wife by issuing the subject cheque to the Complainant.

10. In the light of the above, I find there is no merit in this revision. Consequently, the same is hereby dismissed.

N. A. BRITTO, J.

RD